

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

JOSEPH McDONALD,

Petitioner,

v.

No. CV 09-0022 MV/GBW

JAMES JANECKA,

Respondent.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court *sua sponte* for further review of this habeas corpus proceeding. *See* 28 U.S.C. § 2254 R. 4. For the reasons below, the Petition will be dismissed with leave to re-file.

The return address on the envelope that contained Mr. McDonald's Petition (Doc. 5) is in the name and prisoner ID number of John Paul Thomas. The Petition is drafted and "signed" in Mr. Thomas's printed style of handwriting. The interlocutory Notice Of Appeal (Doc. 20) also is "signed" in the same printed style as the Petition. The Court notes that the Notice Of Change Of Address (Doc. 13) and Motion To Cure Deficiency (Doc. 17) are in a different handwriting.

The drafter also filed and signed, in his own name, an "Amicus Curiae Motion To Admit Third Party Petitioner And Memorandum Of Points And Authorities In Agreence Of The Motion" (Doc. 21), seeking leave to file a third-party petition for writ of habeas corpus on behalf of the named Petitioner McDonald. The Court denied the motion and admonished the drafter that, although he is not prohibited from assisting other inmates generally, all filings must be signed by

the individual plaintiff/petitioner or by an attorney-at-law.

The instant Petition does not appear to be an attempted forgery, but neither is it an inadvertently unsigned document. The drafter of the instant Petition is an experienced pro se prison litigator who has filed a number of cases in this Court. *See* Nos. CV 08-0427 MV/LAM; CV 08-1016 JH/WPL; CV 08-1178 WJ/DJS; CV 09-0128 WJ/ACT; CV 09-0293 RB/WPL; CV 09-0547 MV/KBM; CV 09-0574-MV/ KBM. The drafter clearly knows that Mr. McDonald must sign his own pleadings, as shown by the initiating motion that he prepared in *LeMay v. Two Unknown Detectives*, No. CV 09-0549 WJ/LFG, and by his own third-party motion in this proceeding.

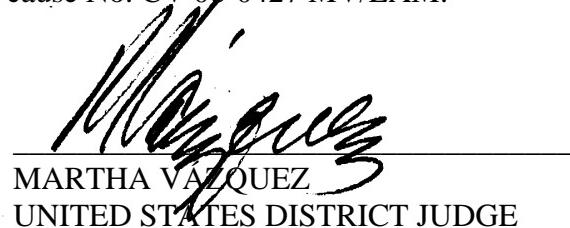
It does not necessarily appear that the drafter of the instant Petition is attempting to defraud the Court as to the real party in interest or the party's signature. *See* Fed. R. Civ. P. 17(a), 11(a). On the other hand, it is clear that this Petition does not constitute a curable unsigned document. *See Becker v. Montgomery*, 532 U.S. 757, 765 (2001) (ruling that failure to sign notice of appeal is curable defect). The drafter, with or without the approval of a real party petitioner, may not simply submit documents under another person's name. *See* Fed. R. Civ. P. 11(a). The Court hereby notifies the drafter of this Petition, again, that further abuses may result in the entry of filing restrictions against him. The Court will dismiss the Petition, *see* § 2254 R. 4, with leave to re-file. If Mr. McDonald fails to file a properly executed petition, this proceeding may be dismissed without further notice.

**IT IS THEREFORE ORDERED** that the Petition filed in this matter is DISMISSED without prejudice to Mr. McDonald's right to file a properly executed petition within fourteen (14) days from entry of this Order;

**IT IS FURTHER ORDERED** that, in view of the pending appeal and with the exception of the filing of a proper petition, this proceeding is STAYED until further order of this Court; and the

Clerk is directed to send a form § 2254 petition with instructions to Mr. McDonald;

IT IS FURTHER ORDERED that the Clerk is directed to mail a copy of this order to John Paul Thomas at his address on the docket in cause No. CV 08-0427 MV/LAM.



MARTHA VALQUEZ  
UNITED STATES DISTRICT JUDGE